

JONES DAY

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*Attorneys for Creditor
Financial Guaranty Insurance Company*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,)	
)	Chapter 11
Debtors.)	Jointly Administered

**FINANCIAL GUARANTY INSURANCE COMPANY'S
REBUTTAL DESIGNATIONS OF DEPOSITION TESTIMONY**

Pursuant to Rule 32 of the Federal Rules of Civil Procedure, as made applicable by Rule 7032 of the Federal Rules of Bankruptcy Procedure, Financial Guaranty Insurance Company ("FGIC"), by and through its undersigned counsel, submits designations of rebuttal deposition testimony to be used at the evidentiary hearing on *Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 for Approval of the Settlement Agreement Among the Debtors, FGIC, the FGIC Trustees, and Certain Institutional Investors* [Dkt. No. 3929], which was held on August 16 and 19, 2013 (the "Rebuttal Deposition Designations").

The Rebuttal Deposition Designations are submitted in response to evidence elicited at trial, including the cross-examinations by the Junior Secured Noteholders and the Investor Objectors.¹ The Monarch Investors object to the Rebuttal Deposition Designations on the ground that "nothing in any of the scheduling orders or in any of Judge Glenn's subsequent comments regarding submissions in connection with trial permitted 'rebuttal' designations."

¹ The Investor Objectors include CQS ABS Master Fund Limited, CQS ABS Alpha Master Fund Limited, Bayview Fund Management LLC, Monarch Alternative Capital LP ("Monarch"), Stonehill Capital Management LLC (collectively, the "Monarch Investors"), and Federal Home Loan Mortgage Corporation ("Freddie Mac").

Freddie Mac has joined in the objection. The JSNs have not objected to the Rebuttal Deposition Designations.

The applicable scheduling orders do not prohibit the designation of rebuttal testimony; in fact, they do not specifically address the issue at all. See Dkt. Nos. 4168 and 4363. During trial, the Court affirmatively ruled that the introduction of rebuttal testimony was permissible to respond to evidence elicited by the objectors on cross examination. See e.g., Aug. 19, 2013 Hr’g Tr. 297:2-19, 466:16-467:19 (overruling the Monarch Investors’ objection to rebuttal testimony concerning extensive negotiations over the terms of the FGIC-ResCap settlement agreement because they “opened the door to this”); see also Fed. R. Evid. 611 (“The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; [and] (2) avoid wasting time.”).

FGIC’s Rebuttal Deposition Designations

WITNESS: Robert Major (Deposition pursuant to Rule 30(b)(6), dated July 17, 2013)

Page 154, Line 22 through Page 155, Line 9.

WITNESS: John Dubel (Deposition pursuant to Rule 30(b)(1), dated July 10, 2013)

Page 89, Line 23 through Page 90, Line 10.

WITNESS: Lewis Kruger (Deposition pursuant to Rule 30(b)(1), dated July 11, 2013)

Page 69, Line 6 through Page 70, Line 21.

Dated: New York, New York
August 21, 2013

JONES DAY

By: _____/s/ Richard L. Wynne
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1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----)
IN RE:) Case No. 12-12020
5) (MG)
RESIDENTIAL CAPITAL,)
6 LLC, et al.,) Chapter 11
Debtors.) Administered Jointly
7 -----)

8 July 17, 2013

9 9:08 a.m.

10
11 DEPOSITION of ROBERT MAJOR,
12 30(b)(6) witness on behalf of Bank of New York
13 Mellon, pursuant to Notice, held at the offices
14 of Wilkie Farr & Gallagher, LLP, 787 Seventh
15 Avenue, New York, New York, before Eileen
16 Mulvenna, CSR/RMR/CRR, Certified Shorthand
17 Reporter, Registered Merit Reporter, Certified
18 Realtime Reporter and Notary Public of the State
19 of New York.
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25

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<p>1 2 A P P E A R A N C E S: 3 4 WILLKIE FARR & GALLAGHER, ESQS. Attorneys for Investors Monarch, Stonehill, 5 Bayview and CQS 787 Seventh Avenue 6 New York, New York 10019 BY: JOSEPH BAIO, ESQ. jbaio@willkie.com PIA WILLIAMS, ESQ. 8 pwilliams@willkie.com EMMA JAMES, ESQ. 9 ejames@willkie.com 10 11 ALSTON & BIRD, LLP Attorneys for Wells Fargo as Trustee and the 12 Witness 90 Park Avenue 13 New York, New York 10016 BY: WILLIAM HAO, ESQ. 14 william.hao@alston.com 15 16 DECHERT, LLP Attorneys for Bank of New York Mellon Trust 17 Company, N.A. as Trustee or Investor Trustee and the Witness 1095 Avenue of the Americas 18 New York, New York 10036-6797 BY: MAURICIO ESPANA, ESQ. mauricio.espana@dechert.com 20 GLENN E. SIEGEL, ESQ. glenn.siegel@dechert.com 21 22 SEWARD & KISSEL, LLP Attorneys for Law Debenture Trust Company of 23 New York One Battery Park Plaza 24 New York, New York 10004 BY: THOMAS ROSS HOOPER, ESQ. 25 hooper@sewkis.com</p>	<p>1 2 A P P E A R A N C E S (Continued): 3 4 ROPES & GRAY, LLP Attorneys on Behalf of the Steering 5 Committee of RMBS Investors 1211 Avenue of the Americas 6 New York, New York 10036-8704 (NOT PRESENT) 7 8 9 THE LAW OFFICE OF THOMAS M. MULLANEY Attorneys for CQS parties 10 489 Fifth Avenue, Suite 1900 New York, New York 10017 11 BY: THOMAS M. MULLANEY, ESQ. tmm@mullaw.com 12 13 14 GIBBS & BRUNS, LLP Attorneys for the Steering Committee 15 of RMBS Investors 1000 Louisiana, Suite 5300 16 Houston, Texas 77002 BY: DAVID SHEEREN, ESQ. 17 dsheeren@gibbsbruns.com 18 19 MCKOOL SMITH, P.C. Attorneys for Freddie Mac 20 One Bryant Park, 47th Floor New York, New York 10036 21 BY: MICHAEL R. CARNEY, ESQ. mcarney@mckoolsmith.com 22 23 24 25</p>
Page 3	Page 5
<p>1 2 A P P E A R A N C E S (Continued): 3 4 SEWARD & KISSEL, LLP Attorneys for US Bank 5 One Battery Park Plaza New York, New York 10004 6 BY: ARLENE R. ALVES, ESQ. alves@dewkis.com 7 8 9 KRAMER LEVIN NAFTALIS & FRANKEL, LLP Attorneys for the Official Committee of the 10 Unsecured Creditors 1177 Avenue of the Americas 11 New York, New York 10036 BY: PHILIP S. KAUFMAN, ESQ. 12 pkaufman@kramerlevin.com 13 14 JONES DAY Attorneys for Financial Guaranty Insurance 15 Company 222 East 41st Street 16 New York, New York 10017-6702 BY: HOWARD SIDMAN, ESQ. hsidman@jonesday.com 17 RICHARD L. WYNNE, ESQ. 18 rlwynne@jones day.com 19 20 MORRISON & FOERSTER, LLP Attorneys on behalf of the debtors 21 1290 Avenue of the Americas New York, New York 10104 22 BY: ROBERT BAEHR, ESQ. rbaher@mofo.com 23 (Present via telephone) 24 25</p>	<p>1 2 (Witness sworn) 3 THE REPORTER: Will everyone please 4 state their appearance, firm and the party 5 they represent. 6 MR. ESPANA: Mauricio Espana, 7 Dechert LLP, on behalf of the Bank of New 8 York Mellon entities. 9 MR. SIEGEL: Glenn Siegel, 10 Dechert LLP, on behalf of the Bank of New 11 York Mellon entities. 12 MS. ALVES: Arlene Alves, Seward & 13 Kissel, on behalf of US Bank as trustee. 14 MR. SHEEREN: David Sheeren, Gibbs & 15 Bruns, on behalf of the Steering Committee 16 of RMBS Investors. 17 MR. HOOPER: Ross Hooper from Seward 18 & Kissel on behalf of Law Debenture Trust 19 Company of New York, a separate trustee. 20 MR. HAO: William Hao of Alston & 21 Bird for Wells Fargo Bank. 22 MR. SIDMAN: Howard Sidman, Jones 23 Day, for FGIC. 24 MR. KAUFMAN: Philip Kaufman, Kramer 25 Levin, for the creditors committee.</p>

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1 Robert Major
2 answered.
3 MR. WYNNE: I'm going to object
4 based on the mediation privilege.
5 MR. ESPANA: Don't answer it.
6 MR. BAIO: You're saying he can't
7 answer that because of the mediation
8 privilege?
9 MR. WYNNE: I'm sorry, I missed
10 your -- I'm looking at the screen. I
11 missed your "without going into the
12 substance" part, so I'll withdraw the
13 objection.
14 MR. BAIO: I don't know whether
15 he --
16 MR. ESPANA: You want to repeat the
17 question?
18 MR. BAIO: Let me finish this
19 thought and then I'll get back to that.
20 (Discussion off the record.)
21 BY MR. BAIO:
22 Q. Yes, the question is, without going
23 into the substance of what any settlement
24 proposals might have said, did you see any prior
25 settlement proposals by FGIC?

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1 Robert Major
2 MR. ESPANA: You can answer.
3 THE WITNESS: Yes.
4 BY MR. BAIO:
5 Q. You did?
6 A. (Witness nods head in the
7 affirmative.)
8 Q. How many?
9 A. I don't recall.
10 Q. When did you see the first one?
11 MR. ESPANA: Objection.
12 I will instruct you not to answer.
13 BY MR. BAIO:
14 Q. Do you believe that the negotiations
15 of the settlement agreement were at arm's length
16 and hard fought?
17 A. Yes.
18 Q. How so?
19 MR. ESPANA: Again, I just caution
20 you not to disclose the substance of
21 communications just generally.
22 THE WITNESS: It was a tri-party
23 agreement with disputes between the three
24 parties; ResCap, FGIC, and the trustees.
25 The claims against -- among the three

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1 Robert Major
2 parties were very complex. And resolution
3 was very important in the context of the
4 mediation and also vis-a-vis between FGIC
5 and the trustees.
6 BY MR. BAIO:
7 Q. And do you intend to testify about
8 the hard-fought negotiations at the hearing?
9 A. If I'm called to testify, yes.
10 Q. Well, give me examples of some of
11 the hard-fought exchanges that you engaged in
12 that benefited the investors.
13 MR. ESPANA: I'm instructing the
14 witness not to answer. You can answer
15 generally in describing why you thought
16 there were hard-fought negotiations, but
17 don't go into the substance.
18 MR. BAIO: Just so I'm clear, I'm
19 asking about the substance because it's the
20 only way that I can test whether it was
21 hard fought.
22 MR. ESPANA: Then I'm instructing
23 you not to answer.
24 MR. BAIO: Let's take a few minutes.
25 (Recess from the record.)

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1 Robert Major
2 MR. BAIO: Let's go back on the
3 record.
4 BY MR. BAIO:
5 Q. Can you look at Exhibit -- put
6 before you Exhibit 5 again. And turn to page 3.
7 The chart under "FGIC Settlement
8 Proposal and FGIC Plan," do you see that darkened
9 chart?
10 A. Yes.
11 Q. Who provided the information
12 contained in that upper box, "Considerations,
13 Benefits and Risks"?
14 A. Duff & Phelps.
15 Q. And did Duff & Phelps, during the
16 time that you met with them -- strike that.
17 Were you advised by Duff & Phelps of
18 any other benefits and risks to the investors
19 under the FGIC settlement proposal beyond what
20 appears here?
21 A. Advised of any risks to the FGIC
22 settlement investors?
23 Q. Yes -- not -- I said to the
24 investors -- I hope I did. Did Duff -- were you
25 advised by Duff & Phelps of any other benefits or

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
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5
6 IN RE:)
RESIDENTIAL CAPITAL, LLC,)
7 Et al.,)
) Civil Action No.
8 Debtors,) 12-12020 (MG)
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14 CONFIDENTIAL DEPOSITION OF JOHN S. DUBEL
15 New York, New York
16 Wednesday, July 10, 2013
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24 Reported by:
JOMANNA DeROSA, CSR
25 JOB NO. 63468

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<p>1 2 July 10, 2013 3 1:43 p.m. 4 5 6 Confidential Deposition of 7 JOHN S. DUBEL, held at the offices 8 of McKool Smith, One Bryant Park, 9 47th Floor, New York, New York, 10 before Jomanna DeRosa, a Certified 11 Shorthand Reporter and Notary Public 12 of the States of New York, New Jersey, 13 California and Arizona. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S: 3 4 MORRISON & FOERSTER 5 Attorneys for Debtors 6 1290 Avenue of the Americas 7 New York, New York 10104 8 BY: J. ALEXANDER LAWRENCE, ESQ. 9 10 MCKOOL SMITH 11 Attorneys for Freddie Mac 12 One Bryant Park 13 New York, New York 10036 14 BY: PETER GOODMAN, ESQ. 15 MICHAEL CARNEY, ESQ. 16 17 JONES DAY 18 Attorneys for FGIC 19 222 East 41st Street 20 New York, New York 10017 21 BY: HOWARD SIDMAN, ESQ. 22 RICHARD WYNNE, ESQ. 23 24 25 ///</p>
Page 4	Page 5
<p>1 2 A P P E A R A N C E S: 3 WILLKIE FARR & GALLAGHER 4 Attorneys for Stonehill, Monarch, CQS, 5 Bayview Fund Management, 6 787 Seventh Avenue 7 New York, New York 10019 8 BY: JOSEPH BAIO, ESQ. 9 EMMA JAMES, ESQ. 10 11 WEIL GOTSHAL & MANGES 12 Attorneys for FGIC, 13 767 Fifth Avenue 14 New York, New York 10153 15 BY: RICHARD SLACK, ESQ. 16 17 KRAMER LEVIN NAFTALIS & FRANKEL 18 Attorneys for Official Committee of 19 Unsecured Creditors, 20 1117 Avenue of the Americas 21 New York, New York 10036 22 BY: DANIEL EGGERMANN, ESQ. 23 24 25 ///</p>	<p>1 2 A P P E A R A N C E S: 3 ROPES & GRAY 4 Attorneys for Steering Committee of 5 of RMBS Investors 6 800 Boylston Street 7 Boston, Massachusetts 02199 8 BY: ANDREW DEVORE, ESQ. 9 10 DECHERT 11 Attorneys for Bank of New York Mellon 12 1095 Avenue of the Americas 13 New York, New York 10036 14 BY: JAMES MOORE, ESQ. 15 NEGISA BALLUKU, ESQ. 16 17 THE LAW OFFICES OF THOMAS M. MULLANEY 18 Attorneys for CQS 19 489 Fifth Avenue 20 New York, New York 10017 21 BY: THOMAS MULLANEY, ESQ. 22 23 24 25 ///</p>

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<p>1 2 A P P E A R A N C E S: 3 SEWARD & KISSEL 4 Attorneys for U.S. Bank, 5 One Battery Park Plaza 6 New York, New York 10004 7 BY: MARK KOTWICK, ESQ. 8 DALE CHRISTENSEN, JR., ESQ. 9 10 ALSTON & BIRD 11 Attorneys for Wells Fargo Bank, 12 90 Park Avenue 13 New York, New York 10016 14 BY: MICHAEL JOHNSON, ESQ. 15 16 GIBBS & BRUNS 17 Attorneys for Steering Committee of 18 RMBS Investors 19 1100 Louisiana 20 Houston, Texas 77002 21 BY: DAVID SHEEREN, ESQ. 22 23 ALSO PRESENT: 24 PHIL GLAUBERSON, Legal Video Specialist 25 SHAUNA AARON (Summer Associate at Weil)</p>	<p>1 J. DUBEL - CONFIDENTIAL 2 THE VIDEOGRAPHER: This is Tape 3 No. 1 of the videotaped deposition of John 4 Dubel in re: Residential Capital, LLC, et al. 5 in the United States Bankruptcy Court, 6 Southern District of New York, case number 7 1212020MG. This deposition is being held at 8 McKool Smith, One Bryant Park, New York, New 9 York, on July 10th, 2013, at approximately 10 1:43 p.m.. My name is Phil Glauberson from 11 the firm of TSG Reporting, and I am the legal 12 video specialist. The court reporter is 13 Jomanna DeRosa with TSG Reporting. 14 Will counsel please introduce 15 themselves? 16 MR. GOODMAN: My name is Peter 17 Goodman, and I'm with the firm of McKool 18 Smith, and we are counsel to Freddie Mac. 19 MR. BAIO: Joseph Baio from Willkie 20 Farr & Gallagher. I'm also here with Emma 21 James. We represent Stonehill, Monarch, the 22 CQS and Bayview Fund Management. 23 MR. DEVORE: Andrew Devore from 24 Ropes & Gray for the Steering Committee of 25 RMBS Investors.</p>
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<p>1 J. DUBEL - CONFIDENTIAL 2 MR. SHEEREN: David Sheeren, Gibbs 3 Bruns, Steering Committee of RMBS Investors. 4 MR. CHRISTENSEN: Dale Christensen, 5 Seward & Kissel for Law Debenture. 6 MR. JOHNSON: Michael Johnson from 7 Alston & Bird for Wells Fargo Bank as trustee. 8 MR. MULLANEY: Tom Mullaney from 9 the Law Offices of Thomas M. Mullaney for CQS. 10 MR. KOTWICK: Mark Kotwick from 11 Seward & Kissel on behalf of U.S. Bank as 12 Trustee. 13 MR. EGGERMANN: Daniel Eggermann 14 from Kramer Levin on behalf of the Official 15 Creditors. 16 MR. MOORE: James Moore from 17 Dechert on behalf of Bank New York Mellon. 18 MR. LAWRENCE: Alex Lawrence, 19 Morrison Foerster on behalf of the Debtors. 20 MR. SLACK: Richard Slack from Weil 21 Gotshal & manges for FGIC and the FGIC 22 rehabilitator. And with me today is Shauna 23 Aaron who is one of our summer associates. 24 MR. WYNNE: Richard Wynne of Jones 25 Day for FGIC.</p>	<p>1 J. DUBEL - CONFIDENTIAL 2 MR. SIDMAN: Howard Sidman, Jones 3 Day for FGIC. 4 THE VIDEOGRAPHER: Will the court 5 reporter please swear in the witness. 6 J O H N S. D U B E L, called as a witness, 7 having been duly sworn by a Notary 8 Public, was examined and testified as 9 follows: 10 EXAMINATION BY 11 MR. GOODMAN: 12 Q. Good afternoon, Mr. Dubel. We've 13 met before, but again I'm Peter Goodman from 14 McKool Smith for the purpose of the record. 15 Mr. Dubel, have you ever been 16 deposed before? 17 A. I have. 18 Q. How many times? 19 A. Twenty or thirty times. I'm not -- 20 I don't have an exact count. 21 Q. And so you know the ground rules in 22 terms of deposition, the court reporter needs you 23 to answer audibly. The court reporter can't pick 24 up hand gestures or facial gestures or nods. The 25 videographer obviously can, so -- and if you need</p>

<p style="text-align: right;">Page 86</p> <p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. Not my lawyers.</p> <p>3 Q. Okay.</p> <p>4 A. Not my lawyers.</p> <p>5 Q. Fair enough. Fair enough.</p> <p>6 Turn to paragraph --</p> <p>7 MR. SLACK: Maybe lawyers taking</p> <p>8 depositions.</p> <p>9 MR. GOODMAN: It's a joke.</p> <p>10 Q. If you could, turn to Exhibit 2 for</p> <p>11 a moment, Section 9.3.</p> <p>12 A. On page 27? Is that what you're</p> <p>13 referring to?</p> <p>14 Q. Uh-huh. And we're talking about</p> <p>15 how the Disclosure Statement -- I guess earlier</p> <p>16 how the Disclosure Statement is subject to the</p> <p>17 plan. 9.3 starts with the heading Modification.</p> <p>18 Correct?</p> <p>19 A. I'm sorry. I didn't understand</p> <p>20 what you said before. The Disclosure Statement</p> <p>21 is --</p> <p>22 Q. Fair enough. Strike that.</p> <p>23 Let's just turn to Section 9.3,</p> <p>24 page 27 of Exhibit 2.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 87</p> <p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 Q. And that's entitled To</p> <p>3 Modification.</p> <p>4 A. It's entitled Modification.</p> <p>5 Q. Okay. Correct. And it states from</p> <p>6 time -- from and after -- let me start over.</p> <p>7 "From and after the effective date,</p> <p>8 only the NYSDFS may modify the plan and only to</p> <p>9 the extent it determines necessary for the fair</p> <p>10 and equitable treatment of policyholders in</p> <p>11 general provided, however, that the NYSDFS shall</p> <p>12 obtain Court approval for material modification."</p> <p>13 Correct?</p> <p>14 MR. SIDMAN: Objection to the form.</p> <p>15 You missed a word, but that's okay.</p> <p>16 MR. GOODMAN: Okay.</p> <p>17 Q. Do you agree that that's what's</p> <p>18 stated in Section 9.3 of the plan subject to your</p> <p>19 client -- your attorney's --</p> <p>20 A. I'll agree that 9.3 states certain</p> <p>21 stuff. It is what it -- it says what it says. If</p> <p>22 you're asking me a question, I can respond to the</p> <p>23 question.</p> <p>24 Q. Okay. What's your understanding --</p> <p>25 A. But the wording -- the wording is</p>
<p style="text-align: right;">Page 88</p> <p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 what it is.</p> <p>3 Q. Yeah. And what's your</p> <p>4 understanding of 9.3 of the plan?</p> <p>5 A. That from and after the effective</p> <p>6 date, only the NYSDFS, as I referred to before as</p> <p>7 the DFS, may modify the plan and only to the</p> <p>8 extent that it determines it's necessary for the</p> <p>9 fair and equitable treatment of policyholders in</p> <p>10 general provided, however, that DFS shall obtain</p> <p>11 prior Court approval for any material</p> <p>12 modification.</p> <p>13 Q. Okay. And you're familiar with the</p> <p>14 proposed ResCap FGIC settlement with -- aren't</p> <p>15 you? Is that correct?</p> <p>16 MR. SIDMAN: Objection to form.</p> <p>17 Q. Fair enough. Strike that.</p> <p>18 Are you familiar with -- are you</p> <p>19 familiar with the ResCap FGIC settlement --</p> <p>20 MR. SIDMAN: Object to the form.</p> <p>21 Q. -- that's at issue before the</p> <p>22 Court?</p> <p>23 A. Are you referring to the settlement</p> <p>24 agreement?</p> <p>25 Q. Yes, the settlement agreement.</p>	<p style="text-align: right;">Page 89</p> <p>1 J. DUBEL - CONFIDENTIAL</p> <p>2 A. I am familiar with it, yes.</p> <p>3 Q. Were you involved in the</p> <p>4 negotiations of that agreement?</p> <p>5 A. I was.</p> <p>6 Q. Did you have a significant</p> <p>7 involvement in that settlement agreement?</p> <p>8 MR. SIDMAN: Objection to the form.</p> <p>9 You can answer.</p> <p>10 A. Yes.</p> <p>11 Q. Spent a lot of hours negotiating on</p> <p>12 it?</p> <p>13 MR. SIDMAN: Object to the form.</p> <p>14 A. Yes.</p> <p>15 Q. How many hours, would you say?</p> <p>16 A. I'm fortunately not required to</p> <p>17 keep time records, like attorneys are. But it</p> <p>18 was a -- all of that which went into the</p> <p>19 settlement agreement would have been over a period</p> <p>20 of many months and many, many hours. I don't have</p> <p>21 a time record to know how many exact hours, but it</p> <p>22 was a lot of time.</p> <p>23 Q. And when did the negotiations</p> <p>24 begin?</p> <p>25 A. On the --</p>

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J. DUBEL - CONFIDENTIAL

Q. On the settlement --

A. -- actual document -- the settlement agreement, I don't recall. But on the concepts that were incorporated into the settlement agreement --

Q. Fair enough.

A. -- it would have been sometime in mid to the latter part of January of 2013. It was all part of the mediation process.

THE WITNESS: Could I interrupt for one second? Could I ask one of you guys down there to throw me a water, please? Make that two, please, for the court reporter, also?

Q. Mr. Dubel, do you know whether the settlement is a condition for the rehabilitation plan to go effective?

MR. SIDMAN: Object to the form.

A. I'm not an attorney, so I can't answer that question.

Q. But you know the plan has not gone effective yet. Isn't that correct?

A. That's correct.

Q. And the plan of reorganization has provisions regarding the conditions to the

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J. DUBEL - CONFIDENTIAL

effective date. Are you familiar with those?

MR. SIDMAN: Objection to the form.

A. Which plan of reorganization are you referring to?

Q. I'm sorry, the Plan of Rehabilitation. Fair enough. Exhibit No. 2.

A. Okay. I'm sorry.

Q. Does Exhibit -- the Plan of Rehabilitation, Exhibit No. 2 have, conditions -- list conditions before it will go effective?

A. Give me a second. Let me just glance at it.

Q. Okay. Well, I'll refer you to Section 6.1 of Exhibit 2.

A. The sections refers to conditions precedent to the effective date, yes.

Q. And do you know whether the settlement is a condition to the effective date of the plan?

A. Again, you're asking me for a legal interpretation, and I'm not a -- I'm not the attorney. I didn't draft this document, so I would not want to --

Q. I'm asking -- I'm asking you for a

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J. DUBEL - CONFIDENTIAL

layman's understanding.

Was it your understanding that the plan would ever be conditioned upon the ResCap settlement?

MR. SIDMAN: Objection to the form.

A. Again, I'm not an attorney, so I can't answer that question.

Q. I'm not asking your legal view. I'm just asking, was it ever your understanding that the plan of reorganization would be conditioned upon entering into a settlement -- entering into the ResCap settlement that we've been discussing.

MR. SIDMAN: Same objection.

MR. SLACK: I'm going -- I'm going to say, if he has an understanding that's based -- he doesn't have an understanding, but if he does, if it's based on communications with counsel, I instruct you not to answer.

MR. SIDMAN: Same instruction.

A. And I'm assuming you're referring to the Plan of Rehabilitation?

Q. Yes.

A. Because I think you had stated the

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J. DUBEL - CONFIDENTIAL

plan of reorganization, so --

Q. If I did that again, I'm apologizing.

A. Again, I'm not an attorney. Any knowledge I have about these conditions and whether or not that is something that has to do with the settlement -- the settlement agreement is tied into this effective date, I would have to consult with counsel who drafted this plan.

Q. Okay. Well, put it this way, was it ever your -- the settlement negotiations began in earnest for the current settlement in January 2013. Correct?

MR. SIDMAN: Objection.

A. Yeah -- well, they started it. You're using the term "earnest." I wouldn't, you know.

Q. Okay. Use your term --

A. They started.

Q. -- they started in earnest. Okay.

A. No.

MR. SIDMAN: You said in "earnest." He said "started."

MR. GOODMAN: Okay. They started.

24 (Pages 90 to 93)

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L. Kruger

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No.
12-12020 (MG)

RESIDENTIAL CAPITAL, LLC,
et al., (Jointly Administered)
(Bankr. S.D.N.Y.)

Debtors

-----x

DEPOSITION OF LEWIS KRUGER

New York, New York

Thursday, July 11, 2013

Reported by:

THOMAS A. FERNICOLA, RPR

JOB NO. 63547

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<p data-bbox="175 159 467 184">1 L. Kruger</p> <p data-bbox="175 191 191 216">2</p> <p data-bbox="175 222 191 247">3</p> <p data-bbox="175 254 191 279">4</p> <p data-bbox="175 285 191 310">5</p> <p data-bbox="175 317 483 378">6 July 11, 2013 7 10:06 a.m.</p> <p data-bbox="175 384 191 409">8</p> <p data-bbox="175 415 191 441">9</p> <p data-bbox="175 447 784 636">10 Deposition of LEWIS KRUGER, held at the 11 Law Offices of White & Case, LLP, 1155 Avenue of 12 the Americas, New York, New York, before 13 Thomas A. Fernicola, a Registered Professional 14 Reporter and Notary Public of the State of New 15 York. 16 17 18 19 20 21 22 23 24 25</p>	<p data-bbox="849 159 1182 184">1 L. Kruger</p> <p data-bbox="849 191 1198 216">2 A P P E A R A N C E S :</p> <p data-bbox="849 222 865 247">3</p> <p data-bbox="849 254 865 279">4</p> <p data-bbox="849 285 1442 474">5 WHITE & CASE 6 Attorneys for the Ad Hoc Group of 7 Junior Secured Noteholders 8 1155 Avenue of the Americas 9 New York, New York 10036 10 BY: J. CHRISTOPHER SHORE, ESQ. 11 VANESSA SODERBERG, ESQ. 12 13 14</p> <p data-bbox="849 579 1458 768">15 MORRISON & FOERSTER 16 Attorneys for the Debtor and the Witness 17 1290 Avenue of the Americas 18 New York, New York 10104 19 BY: CHARLES KERR, ESQ. 20 J. ALEXANDER LAWRENCE, ESQ. 21 22 23 24 25</p>
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<p data-bbox="175 1060 638 1121">1 L. Kruger 2 A P P E A R A N C E S (Continued): 3</p> <p data-bbox="175 1157 784 1377">4 KRAMER LEVIN NAFTALIS & FRANKEL 5 Attorneys for the Official Committee 6 of Unsecured Creditors 7 1177 Avenue of the Americas 8 New York, New York 10036 9 BY: PHILIP KAUFMAN, ESQ. 10 DANIEL EGGERMANN, ESQ. 11 12 13</p> <p data-bbox="175 1482 683 1703">14 WILLKIE FARR & GALLAGHER 15 Attorneys for Monarch, Stonehill, 16 Bayview and CQS 17 787 Seventh Avenue 18 New York, New York 10019 19 BY: MARY EATON, ESQ. 20 EMMA JAMES, ESQ. 21 22 23 24 25</p>	<p data-bbox="849 1060 1398 1121">1 L. Kruger 2 A P P E A R A N C E S (Continued): 3</p> <p data-bbox="849 1157 1414 1314">4 JONES DAY 5 Attorneys for FGIC 6 222 East 41st Street 7 New York, New York 10017 8 BY: RICHARD WYNNE, ESQ. 9 10</p> <p data-bbox="849 1377 1414 1535">11 ALSTON & BIRD 12 Attorneys for Wells Fargo 13 90 Park Avenue 14 New York, New York 10016 15 BY: WILLIAM HAO, ESQ. 16 17</p> <p data-bbox="849 1608 1425 1766">18 McKOOL SMITH 19 Attorneys for Freddie Mac 20 One Bryant Park 21 New York, New York 10036 22 BY: MICHAEL CARNEY, ESQ. 23 24 25</p>

<p>Page 6</p> <p>1 L. Kruger 2 A P P E A R A N C E S (Continued): 3 4 DECHERT 5 Attorneys for Bank of New York Mellon 6 1095 Avenue of the Americas 7 New York, New York 10036 8 BY: JAMES MOORE, ESQ. 9 10 11 SEWARD & KISSEL 12 Attorneys for Law Debenture Trust 13 Company of New York 14 One Battery Park 15 New York, New York 10004 16 BY: MICHAEL WEITMAN, ESQ. 17 18 19 20 21 22 23 24 25</p>	<p>Page 7</p> <p>1 L. Kruger 2 A P P E A R A N C E S (Continued): 3 4 ROPES & GRAY 5 Attorneys for Steering Committee of 6 RMBS Holders 7 800 Boylston Street 8 Boston, Massachusetts 02199 9 BY: ANDREW DEVORE, ESQ. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 8</p> <p>1 L. Kruger 2 L E W I S K R U G E R, 3 called as a witness, having been duly sworn 4 by a Notary Public, was examined and 5 testified as follows: 6 BY THE REPORTER: 7 Q. Please state your full name and 8 address for the record. 9 A. Lewis Kruger, 257 West 86th Street, 10 New York, New York. 11 (A Discussion was Held off the 12 Record.) 13 MS. EATON: Mary Eaton, Willkie 14 Farr & Gallagher, on behalf of Monarch, 15 Stonehill, Bayview and CQS, together with 16 my colleague, Emma James. 17 MR. KERR: Charles Kerr of Morrison 18 Foerster, on behalf of the debtor. And 19 I'll be representing Mr. Kruger, and with 20 my colleague, Alex Lawrence. 21 MR. WYNNE: Richard Wynne of Jones 22 Day on behalf of FGIC. 23 MR. HAO: William Hao, on behalf of 24 Wells Fargo. 25 MR. KAUFMAN: Phillip Kaufman from</p>	<p>Page 9</p> <p>1 L. Kruger 2 Kramer Levin, on behalf of the committee. 3 And with me is Daniel Eggermann, also on 4 behalf of the committee. 5 MR. CARNEY: Michael Carney from 6 McKool Smith, on behalf of Freddie Mac. 7 MR. MOORE: James Moore from Dechert, 8 on behalf of Bank of New York Mellon. 9 MR. WEITMAN: Mike Weitman from 10 Seward & Kissel, on behalf of Law 11 Debenture. 12 MS. SODERBERG: Vanessa Soderberg 13 from White & Case, on behalf of Junior 14 Secured Noteholders. 15 MR. SHORE: Chris Shore from White & 16 Case on behalf of Junior Secured 17 Noteholders. 18 19 EXAMINATION BY MS. EATON: 20 Q. Good morning, Mr. Kruger. I see 21 you've got a cup of coffee -- 22 A. I do. 23 Q. -- and you're comfortable, I hope. 24 A. I am. 25 Q. If ever you need a --</p>

1 L. Kruger
2 page 1 of Exhibit 2.
3 Do you have that?
4 A. Yes.
5 Q. It says there, "I offer this
6 declaration to show that the debtor's decision
7 to enter into the plan support agreement was a
8 sound exercise of business judgment."
9 Do you see that?
10 A. Yes, I do.
11 Q. Is it the case that the
12 debtors -- well, let me back up.
13 Who exercised -- who at the debtor's
14 exercised the business judgment to enter into
15 the planned support agreement?
16 MR. KERR: And I'm going to object at
17 this point. The plan support agreement has
18 already been approved by the court. You
19 know that. That's not what this deposition
20 is about.
21 I don't know why you're asking
22 Mr. Kruger about a plan support agreement
23 that's already been approved. I'll give
24 you some latitude here, but you're using up
25 your time asking him not about the FGIC

1 L. Kruger
2 declaration. And the question is: Did the --
3 who at the debtor's exercised their business
4 judgment in determining to enter into the plan
5 support agreement?
6 A. I did.
7 Q. And did you, likewise, exercise your
8 business judgment in determining on behalf of
9 the debtor's to enter into the FGIC Settlement
10 Agreement?
11 A. Yes, I did.
12 Q. What was the -- strike that.
13 Now, please turn to paragraph 14 of
14 your declaration. Do you have that before you?
15 A. Yes, I do.
16 Q. That paragraph reads as follows.
17 Quote, "Each of the creditor groups was
18 required to participate in a give and take
19 process through the mediation. In my opinion
20 the process of good-faith negotiations
21 undertaken by all participants resulted in an
22 agreement that is in the best interests not
23 only of the debtor's but also the other
24 mediation participants, including the RMBS
25 trustees and the investors in the RMBS trusts

1 L. Kruger
2 settlement but about a plan support
3 agreement that has already been vetted and
4 approved by the court, so --
5 MS. EATON: I need to register my
6 objection to Mr. Kerr's speaking objection,
7 which he should know is completely
8 improper.
9 BY MS. EATON:
10 Q. Could you please answer my question,
11 Mr. Kruger?
12 A. My business judgment.
13 Q. Not the board of directors?
14 A. Both. They --
15 Q. So the board of directors exercised
16 their business --
17 A. They exercised their judgment by
18 authorizing me to proceed with the FGIC
19 settlement. I think I've said that before.
20 It's still true.
21 Q. This is about the plan support
22 agreement, sir. So let me just get -- let's
23 get a clean question and answer on the record.
24 I've drawn your attention to the
25 first sentence of paragraph 2 of your

1 L. Kruger
2 and all other creditors of the debtor's
3 estates," period, close quote.
4 Do you see that?
5 A. Yes, I do.
6 Q. What was your basis for testifying
7 that the agreement was in the best interests of
8 the investors of the RMBS trusts?
9 MR. KERR: And I'm going to, again,
10 object that your questioning relates to the
11 plan support agreement. And I think it's
12 improper. Mr. Kruger can answer, but I
13 think this is an improper inquiry in this
14 deposition.
15 MS. EATON: I disagree.
16 BY MS. EATON:
17 Q. Please answer the question,
18 Mr. Kruger.
19 A. In my opinion, looking at it from the
20 perspective of as chief restructuring officer
21 of the debtor's estates, and taking into
22 consideration all the other interests of the
23 interested parties, I believe that the
24 combination of the work that had been done
25 during the mediation process under Judge Peck's

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<p>1 L. Kruger</p> <p>2 direction, together with the Ally contribution</p> <p>3 and -- resulted in an availability of funds for</p> <p>4 all parties far greater than would have been</p> <p>5 the case had there been no global plan</p> <p>6 settlement, no PSA, and the result would have</p> <p>7 been, had there not been, significant</p> <p>8 litigation among the creditors, among</p> <p>9 themselves, creditors and the debtor, no Ally</p> <p>10 contribution.</p> <p>11 And my personal opinion would be and</p> <p>12 my business judgment was that if we ended up in</p> <p>13 that situation, there was a very little</p> <p>14 likelihood of a distribution to creditors for</p> <p>15 years to come and that this estate would be</p> <p>16 diminished significantly by the cost of that</p> <p>17 litigation.</p> <p>18 So, for me, it was very easy to think</p> <p>19 this transaction was in the best interest, both</p> <p>20 of the -- of all of the creditors of the</p> <p>21 debtor's estates, as well as the investors.</p> <p>22 Q. And by "transaction" you mean all of</p> <p>23 the transactions contemplated by what you've</p> <p>24 defined in your declaration in paragraph 5 as</p> <p>25 the agreement; right?</p>	<p>1 L. Kruger</p> <p>2 A. Yes.</p> <p>3 Q. In other words, the plan support</p> <p>4 agreement, the planned term sheet, and the</p> <p>5 supplemental term sheet?</p> <p>6 A. Correct.</p> <p>7 Q. And you formed a business judgment,</p> <p>8 if I understand your testimony correctly, that</p> <p>9 that agreement, comprised of at least those</p> <p>10 three elements, was in the best interests of</p> <p>11 the investors in the RMBS trusts?</p> <p>12 A. Correct.</p> <p>13 Q. But you never did any analysis of the</p> <p>14 impact of that agreement on those investors;</p> <p>15 correct?</p> <p>16 MR. KERR: Objection.</p> <p>17 Mischaracterizes testimony. He testified</p> <p>18 what he did.</p> <p>19 A. Want to repeat the question.</p> <p>20 Q. I'll ask a new question.</p> <p>21 What analysis, if any, did you do of</p> <p>22 the impact of the agreement defined in</p> <p>23 paragraph 5 of your declaration on the</p> <p>24 investors of the RMBS trusts?</p> <p>25 MR. KERR: Objection. Asked and</p>
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<p>1 L. Kruger</p> <p>2 answered.</p> <p>3 A. I consulted both with my counsel, my</p> <p>4 advisors, Unsecured Creditors' Committee</p> <p>5 counsel, their advisors. I claim to the</p> <p>6 conclusion which I just restated, which is that</p> <p>7 I believe that the benefits for the</p> <p>8 participants in the estates is far greater as a</p> <p>9 result of the global settlement provided for in</p> <p>10 paragraph 5, as you described it, than the</p> <p>11 alternatives would have been for those same</p> <p>12 creditors.</p> <p>13 Q. But you did not consult with either</p> <p>14 the investors in the RMBS trusts or anyone</p> <p>15 representing the investors in the RMBS trusts;</p> <p>16 correct?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. As part of the global mediation</p> <p>19 process, over the course of the months I had</p> <p>20 presentations made to me by various of the</p> <p>21 parties to the mediation and learned from those</p> <p>22 presentations the views of the various</p> <p>23 participating parties. That informed me and</p> <p>24 helped my decision-making process.</p> <p>25 Q. Who was representing the interests of</p>	<p>1 L. Kruger</p> <p>2 the investors in the RMBS trusts during those</p> <p>3 discussions you just referenced?</p> <p>4 A. I assumed the trusts do that.</p> <p>5 Q. But you didn't know?</p> <p>6 A. No.</p> <p>7 Q. Did you actually speak with anyone</p> <p>8 representing the trusts about the impact of the</p> <p>9 agreement on the investors in the RMBS trusts?</p> <p>10 A. No.</p> <p>11 Q. You spoke, instead, with your</p> <p>12 counsel, the debtor's advisors and advisors to</p> <p>13 the creditors' committee?</p> <p>14 MR. KERR: Objection.</p> <p>15 Mischaracterizes testimony.</p> <p>16 BY MS. EATON:</p> <p>17 Q. Isn't that right?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. Over the course of the months, I</p> <p>20 spoke with any of the mediation participants.</p> <p>21 Q. There was nobody representing the</p> <p>22 investors in the RMBS trusts, the wrapped</p> <p>23 trusts at the mediation; isn't that true?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. I'm not sure I understand your</p>